

fiscal year but before obligation by FEMA of funds under this program may qualify for payment of a Federal financial contribution out of the funds subsequently appropriated for that fiscal year.

§ 302.7 Use of funds, materials, supplies, equipment, and personnel.

Financial contributions provided under the authority of section 205 of the Act are provided for necessary and essential State and local civil defense personnel and administrative expenses as prescribed by the regulations in this part and the provisions of CPG 1-3, and are obligated only on the basis of documentation justifying such need.

(a) *Emergencies.* In addition to such civil defense use, Federal funds obligated under a grantee's approved annual submission may be used, to the extent and under such terms and conditions as prescribed by the Director in CPG 1-3, for providing emergency assistance, including the use of civil defense personnel, organizational equipment, materials, and facilities, in preparation for and response to actual attack-related events or natural disasters (including manmade catastrophies).

(b) *Limitations.* Section 207 of the Act allows use of funds under the Act, including those for this program, for natural (including manmade) disaster preparedness and response purposes only to the extent that such use is consistent with, contributes to, and does not detract from attack-related preparedness (reference 44 CFR part 312).

§ 302.8 Waiver of "single" State agency requirements.

Section 205 of the Act requires that plans for civil defense of the United States be administered or supervised by a single State agency (50 U.S.C. App. 2286). Notwithstanding such law, section 204 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4214) provides authority for the Director as head of the grantor agency, upon the State's request, to waive the single State agency requirement and to approve other State administrative structure or arrangements, upon adequate showing that the requirement prevents the establishment of the most effective

and efficient organizational arrangements within the State government. First, however, the Director must have found that the objectives of the Act (50 U.S.C. app. 2251 *et seq.*) will not be endangered by the use of such other State structure or arrangements. Attachment D of OMB Circular A-102 requires that such requests be given expeditious handling by the grantor agency and that, whenever possible, an affirmative response be made.

[48 FR 44211 Sept. 28, 1983, as amended at 51 FR 12521, Apr. 11, 1986]

PART 303—PROCEDURE FOR WITHHOLDING PAYMENTS FOR FINANCIAL CONTRIBUTIONS UNDER THE FEDERAL CIVIL DEFENSE ACT

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AUTHORITY: 50 U.S.C. app. 2251 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148.

SOURCE: 40 FR 16314, Apr. 11, 1975, unless otherwise noted. Redesignated at 44 FR 56173, Sept. 28, 1979.

§ 303.1 Purpose.

The purpose of the regulation in this part is to establish, pursuant to section 401(h) of the Act, a procedure by which the Director may withhold payments of financial contributions to States or persons, or may limit such payments to specified programs or projects.

§ 303.2 Definitions.

As used herein the following terms shall have the following meanings:

(a) *Act.* The Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 *et seq.*).

(b) *FEMA.* Federal Emergency Management Agency.

(c) *Director.* Director, FEMA.

(d) *State.* The several States, the District of Columbia, Puerto Rico, and the Territories and possessions of the United States.

(e) *Person*. A political subdivision of any State, or combination or group thereof; any interstate civil defense authority established pursuant to section 201(g) of the Act, or any person, corporation, association or other entity of any nature whatsoever, including but not limited to, instrumentalities of States and political subdivisions.

[40 FR 16314, Apr. 11, 1975. Redesignated at 44 FR 56173, Sept. 28, 1979, as amended at 50 FR 40007, Oct. 1, 1985]

§ 303.3 Scope.

(a) Section 401(h) of the Act authorizes the Director to withhold payment of any financial contribution under section 201 or section 205 of the Act to a State or a person, or to limit payments to specified programs or projects upon (1) a finding by the Director of failure by a State or person to expend funds in accordance with the regulations, terms, and conditions established under the Act for approved civil defense plans, programs or projects; and (2) notification to the State or person that certain payments for approved financial contributions will not be made until the Director is satisfied that there will no longer be failure by a State or person to expend funds in accordance with such regulations, terms, and conditions. Prior to the making of such finding and issuance of the notification, the State or person must have been given reasonable notice and opportunity for hearing.

(b) The regulations in this part specify (1) the notice which must be given to a State or person, (2) the procedures for obtaining a hearing, and (3) the terms of the notification to the State or person that further payments will not be made if the Director determines, after notice and hearing that there has been a failure to expend funds in accordance with regulations, terms, and conditions established pursuant to the Act.

§ 303.4 Notice of intention to withhold payments.

(a) Whenever the Director has reason to believe that a State or person has failed to expend funds in accordance with the regulations, terms, or conditions governing a Federal financial contribution established pursuant to the Act, he shall notify the State and

person, where applicable, of such fact and of his intention to withhold any further contributions or payments, or contributions or payments for specific programs or projects, unless the alleged failure is satisfactorily explained, or until he is satisfied that there is no longer such failure to comply.

(b) The notice shall specify (1) the date on which he will stop or withhold further payments; (2) the regulations, terms, or conditions which he believes have not been complied with in the expenditure of funds; and (3) the contributions or payments which he intends to withhold; and shall inform the State and person, where applicable, of the right to obtain a hearing.

(c) This notice shall be delivered by certified mail, return receipt requested.

§ 303.5 Notice of hearing.

If, within 15 days after receipt of the notice described in § 303.4, the State or person requests the Director to hold a hearing, the Director will set the matter for hearing. The Director will give the State (and person, where applicable) reasonable notice of the time and place of the hearing.

§ 303.6 Hearings.

(a) Any hearing under this part shall be held before the Director provided that, in his discretion, the Director may designate a hearing officer who will take evidence and certify, to the Director, the entire record, including recommended findings, and a proposed decision.

(b) The State and person, where applicable, shall be given full opportunity to present their position, orally and in writing.

§ 303.7 Withholding of payments.

(a) If after the hearing, or after opportunity therefor, the Director finds that there has been a failure to expend funds in accordance with the regulations, terms, and conditions established pursuant to the Act, the Director will withhold such contributions and payments as he may consider advisable until the failure to expend funds in accordance with the regulations, terms, and conditions has been